

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY  
MINUTES OF A PUBLIC HEARING**

DATE..... March 24, 2004  
TIME..... 7:00 P.M.  
PLACE..... CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE IN 47901

**MEMBERS PRESENT**

Mark Hermodson  
Gary Schroeder  
Jean Hall  
Steve Clevenger  
Ralph Webb  
Edward Weast  
Edward Butz

**MEMBERS ABSENT**

**STAFF PRESENT**

Sallie Fahey  
Krista Trout  
Jay Seeger, Atty.  
Michelle D'Andrea

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 24<sup>th</sup> day of March 2004, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

Mark Hermodson called the meeting to order.

**I. APPROVAL OF MINUTES**

Steve Clevenger moved to approve the minutes of the February 25, 2003 public hearing. Gary Schroeder seconded and the motion carried by voice vote.

**II. NEW BUSINESS**

Mark Hermodson welcomed Edward Butz to the Board.

Sallie Fahey informed the Board that **BZA-1661 – HARRISON HIGHLAND I, LLC** could not be heard because the site plan was not ready.

**III. PUBLIC HEARING**

Steve Clevenger moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Gary Schroeder seconded and the motion carried by voice vote.

Steve Clevenger moved to continue **BZA-1661 HARRISON HIGHLAND I, LLC** to the April 28, 2004 meeting. Gary Schroeder seconded and the motion carried by voice vote.

1. **BZA-1660—RAYMOND E. BRADLEY:** Petitioner is appealing the decision of an Administrative Officer of Tippecanoe County (County Zoning Enforcement Officer) that a junkyard is being maintained on property owned by petitioner located at 6847 S 775 E, Sheffield 28(SE)22-3.

Steve Clevenger moved to hear and vote on the above-described request. Gary Schroeder seconded the motion.

Mark Hermodson reviewed and explained the procedures for an appeal case. He turned the proceedings over to Jay Seeger.

Jay Seeger recapped the history of this appeal. He stated that each side would be allotted 15 minutes to state their case.

H. Hanly Hammel, 118 ½ North 3<sup>rd</sup> Street, Lafayette, IN, representing the petitioner, stated that this issue was a fundamental principal that everyone should be aware of. He referenced the Declaration of Independence and stated that it was the petitioner's right to pursue happiness. He explained that the petitioner was pursuing the right of happiness by collecting automobiles. He said that the petitioner drove all of the cars in question on to his one-acre of land and at that time they were all licensed and insured. He stressed that these were all cars that he owned and were on his property. He stated that the first thing in any case is to find out what is the charge, look up the law and determine if there is a crime or violation. He referred to the definition of a junkyard in the ordinance and pointed out that even though the cars are used, they are actually in the process of being used and not discarded. He stressed that these cars are the petitioner's hobby and none of them are for sale, ever have been or ever will be for sale. He pointed out that the definition has an exception that would allow the cars so long as they are licensed in the State of Indiana, to the property owner and operable. He stated that this is the petitioner's property since 1965 and all cars are operable. He mentioned that the term and definition of junkyard allege that this is a vocation. He stated this is not the petitioner's vocation, but only a hobby. He said that there are hobbies all over the county and country. He mentioned that there are a lot of boulders in the community that were brought in by the glaciers and are now being used as decoration. He explained that these boulders, in several spots throughout the city, are also hobbies. He mentioned that some people fulfill their pursuit of happiness by collecting birdhouses, and birdhouses are only utilized half of the year. He said that there are also a lot of antique wagons and sleighs that people collect and use in their yard as decoration. He stated that there should be a concern about placing restrictions on someone's property or hobby. He pointed out that not all of the cars in the pictures were on his one-acre of land, but were on other portions of the family farm. He stated that only the cars on the petitioner's land, key number 11802700-0201, should be considered and everything else was out of bounds. He listed the following cars that are on the petitioner's property; 1973 Buick, 1979 Buick, 1977 Buick, 1977 Chevy Blazer, 1926 Ford Model-T and an 1986 Chevy truck. He reiterated that all of these cars were part of the petitioner's hobby; none of them were for sale and never would be for sale. He read the following letter into the record:

Robert B. Liphard, 6844 S. 775 E. Lafayette, IN, in favor of the petitioner.

H. Hanly Hammel stated that the definition of a junkyard did not fit with the petitioner's collection of vehicles. He compared the collection of cars to clothes drying out on a line or antique wagons, sleighs and wheel barrels in people's yards as individual pursuits of happiness. He mentioned that the Civil Liberties Union could come in and turn the burden around to the taxpayers.

Jay Seeger stated that H. Hanly Hammel had 3 minutes left in his allotted time to use for a rebuttal.

David Luhman, representing Al Levy, stated that Al Levy would present pictures to the board and explain his actions. He said that the main issue before the Board was whether or not the facts found by Al Levy support his determination and finding of ordinance violation.

David Luhman asked if he was the Zoning Enforcement Officer for Tippecanoe County.

Al Levy replied affirmatively.

David Luhman asked how long he had been in that position.

Al Levy stated that he has been in this position since June of 1991, in a part time capacity and full time since April of 2001.

David Luhman asked if he was familiar with the Unified Zoning Ordinance.

Al Levy replied affirmatively.

David Luhman asked if he was able to determine whether there was a violation of the UZO.

Al Levy replied affirmatively.

David Luhman asked when he first became aware of the situation on the petitioner's property.

Al Levy stated January 20, 2004.

David Luhman asked how he noticed the property.

Al Levy stated that he had been in Stockwell and on his way to Dayton, happened to see all the vehicles and stopped to take a look.

David Luhman asked him to briefly describe what he saw.

Al Levy stated that the first thing he noticed was the large number of cars on the lot. He said that after he stopped he noticed that several did not have plates and some were in a deteriorated condition.

David Luhman asked what steps he took after seeing this situation.

Al Levy stated that he checked the ownership of the property through the Auditor's records. He said that he then contacted the petitioner, advised him of the problem and requested that the petitioner contact him to discuss the situation. He said that the petitioner did contact him and they discussed the situation. He stated that a second letter was then sent advising the petitioner of the options available to correct the violation. He explained that the second letter included instruction on the right of Appeal, the right of rezone and other corrective measures.

David Luhman asked if all of the documents have been included in the packet.

Al Levy replied affirmatively.

David Luhman stated that the packet also included pictures. He asked if there were slides available of those pictures that Mr. Levy could review.

Al Levy presented and reviewed slides of the zoning map, aerial and close up aerial. He pointed out that both aerials were taken in the spring of 2002. He presented slides of 18 pictures taken by himself on March 1<sup>st</sup>. He said that as near as he could estimate, without entering the property, there are approximately 15 vehicles on the property. He stated that he presumed 2 of them were properly registered.

David Luhman asked if he referred to the UZO after taking these photos in order to determine whether there was a violation or not.

Al Levy replied affirmatively.

David Luhman asked what he used as the basis for determining that there was a violation.

Al Levy stated that the number of unregistered vehicles and the deteriorated condition of the vehicles was part of his determination. He said that conversations with the petitioner as to how they came to be there were part of the determination process. He stated that the petitioner told him that when he finished driving a vehicle, he parked it and bought another one rather than trading it in.

David Luhman asked where Al Levy was when he took the photos.

Al Levy stated that he took the photos while standing in the roadway of CR 775 E, in front of the property.

David Luhman asked for confirmation that Mr. Levy did not enter the petitioner's property.

Al Levy replied affirmatively.

David Luhman asked if he was able to determine from the photos whether all of the cars were licensed.

Al Levy stated that he could not verify all of the vehicles. He stated that he could determine that a large number of the cars were not licensed.

David Luhman stated that the County's position was that the photos and investigation speak for themselves. He said that it is clear that there are a number of used vehicles located within the boundary of the petitioner's property. He stressed that it was also clear that the vehicles were used, accumulated, stored and maybe salvaged. He pointed out that it was clear that not all the vehicles were licensed and not all vehicles were operable. He stated that based on those findings the County's position was that there is a violation. He mentioned that all the proper notices have been sent. He pointed out that the UZO did not have a hobby exemption that would allow this situation. He said that he would like to reserve any remaining time.

H. Hanly Hammel reiterated that the charge is that all of these vehicles are on the petitioner's property. He stated that some of the pictures show that some of the vehicles are on the adjoining property. He pointed out that a junkyard is for discarded property and these cars are not discarded. He said that the petitioner has collected these vehicles as part of his constitutional rights. He stated that this is not vocational property because none of the cars are for sale. He said that this is a false charge on the part of the Zoning Enforcement Officer and he is out of bounds. He stated that the facts do not match the allegations and the appeal should be granted.

Mark Hermodson asked if the petitioner claimed ownership of the approximately 15 vehicles.

H. Hanly Hammel presented a list of 12 cars that are on the property.

Jean Hall asked for confirmation of the petitioner's claim that not all the cars were on the petitioner's property.

H. Hanly Hammel replied affirmatively.

Jean Hall asked if any of the vehicles on the petitioner's property were unlicensed and inoperable.

H. Hanly Hammel stated that there are 2 or 3. He said that there are 5 cars that the petitioner has maintained license and insurance for a while. He reiterated that they were not for sale.

Jean Hall asked for confirmation that the answer was yes, some of the vehicles on his property were not licensed and inoperable at this time.

H. Hanly Hammel replied affirmatively.

Jean Hall asked if the petitioner claimed ownership of the vehicles that were not on his property.

H. Hanly Hammel replied affirmatively. He stated that land was part of the family farm, but not part of the petitioner's one acre.

Jean Hall asked if there should be another violation to another owner for the vehicles that were not on the one-acre.

Al Levy replied negatively. He said that the petitioner led him to believe that all of the cars were his. He referred to the aerial photo where the one-acre was delineated and pointed out that 90% of the vehicles were on the petitioner's property.

Jean Hall said that he just want to be clear because the aerial photo was taken in 2002.

Al Levy stated that it was his belief that the cars in the aerial photo are still in the same place.

Jean Hall reiterated that there are some vehicles on the property that are unlicensed and inoperable.

H. Hanly Hammel said that he turned in a list of cars that were on the lot and licensed and insured.

Jean Hall pointed out that the definition says that it "is or maybe salvaged for reuse", but does not say "will be" or "shall be" salvaged.

Jay Seeger stated that was correct.

H. Hanly Hammel stated that no one could read the mind of the petitioner.

Jean Hall stated that intention does not have anything to do with the term "may be". He asked for confirmation that it did not matter whether the petitioner would salvage the items, only that they could be salvaged.

H. Hanly Hammel stated that if anything were salvaged then it would be a vocation and the items would be for sale. He reiterated that none of these items were for sale and never have been.

Ralph Webb asked how much accumulation is necessary to be considered a junkyard.

Jay Seeger stated that the UZO was drafted with the intension as to not set a specific limit. He explained that the accumulation of one vehicle that is inoperable and unlicensed could be considered a junkyard. He said that at this point the Board had two ways to go. He said that they could discuss the situation among themselves and then prepare proposed findings and a decision based upon the results of that discussion to be further discussed and voted on at the next meeting. He said that the other alternative was to ask each attorney to prepare and present proposed findings for the Board to review and consider at next month's meeting.

Gary Schroeder stated that after reviewing the letter from the petitioner, he did not see any evidence that supports that the petitioner may salvage the items. He said that he is inclined to think it is not a junkyard.

Jean Hall asked if the concept of profit was involved in the definition of a junkyard.

Jay Seeger replied negatively. He explained that a junkyard is a physical condition of the land brought about by the accumulation of various items.

Mark Hermodson pointed out that prior cases brought before the Board were simply accumulations and not for profit, vocations or ever for sale.

Jay Seeger stated that was correct.

Ralph Webb stated that he has not made a decision. He said that he was concerned with the lack of regulation on the amount of accumulation. He said that there are a lot of abandoned cars in the community and nothing happens to them unless they are on a public street.

Mark Hermodson stated that was not the point. He said that the question at hand was whether or not this meets the definition of a junkyard.

Ralph Webb stated that the point is what exactly is an accumulation.

Mark Hermodson stated that by looking at the pictures one can determine if there is an accumulation.

Ralph Webb stated that was judgment call.

Mark Hermodson stated that the Board was here to make a judgment call.

Ralph Webb stated that he could not decide whether the petitioner has done something so wrong as to take action against them. He said that he appreciates the Enforcement Officer bringing this to the Board's attention, but there are other places that have not been noticed yet.

Mark Hermodson stated that all the cases should be brought before the board.

Steve Clevenger stated that he was concerned with the accumulation, the haphazard placement and the condition of these vehicles. He mentioned the open trunk, and numerous tires and parts lying around. He pointed out that if this were a collection of vehicles for a hobby that were cared for and lined up, it might not be constituted as a junkyard.

H. Hanly Hammel pointed out that these photos were taken in January during the worst part of the year for trees. He said that if they were taken during the summer, the cars would not have been noticed. He reiterated that the family across the street does not mind.

Mark Hermodson stated that there would not be a problem if all of the cars were indoors and the UZO does make that provision.

Jay Seeger stated that since there seems to be a lack of consensus by the Board, the most appropriate action is probably to ask the attorneys to present proposed findings and decision at the next meeting. He suggested that these be presented to the Area Plan staff no later than Wednesday, April 21, 2004, so that they could be sent out to the Board with the monthly packets

**IV. ADMINISTRATIVE MATTERS**  
None

**V. ADJOURNMENT**

Steve Clevenger moved for adjournment. Gary Schroeder seconded and the motion carried by voice vote.

The meeting adjourned at 7:45 PM

Respectfully submitted,



Michelle D'Andrea  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Executive Director